

*Changes to legislation:* There are currently no known outstanding effects for the National Parks and Access to the Countryside Act 1949, Schedule 1A. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 1A

#### COASTAL ACCESS REPORTS

##### Textual Amendments

- F1** Sch. 1A inserted (12.11.2009 for specified purposes, 12.1.2010 in so far as not already in force) by Marine and Coastal Access Act 2009 (c. 23), s. 324(1)(c)(d)(2)(d), Sch. 19 (with s. 308)

##### *Introductory*

- 1 In this Schedule—
- (a) “coastal access report” means a report submitted under section 51 pursuant to the coastal access duty;
  - (b) references to a fair balance are references to a fair balance between—
    - (i) the interests of the public in having rights of access over land, and
    - (ii) the interests of any person with a relevant interest in the land, (to which section 297(3) of the Marine and Coastal Access Act 2009 (general duties in connection with the coastal access duty) refers).

##### *Advertising etc of coastal access reports*

- 2 (1) Natural England must—
- (a) advertise a coastal access report, and
  - (b) take such steps as are reasonable to give notice of the report to persons within sub-paragraph (2).
- (2) Those persons are—
- (a) persons with a relevant interest in affected land;
  - (b) each access authority for an area in which affected land is situated;
  - (c) each local access forum for an area in which affected land is situated;
  - (d) the Historic Buildings and Monuments Commission for England;
  - (e) the Environment Agency;
  - (f) such other persons as may be specified in regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision about—
- (a) the form and manner in which reports are to be advertised under sub-paragraph (1)(a);
  - (b) the form and manner in which notices are to be given under sub-paragraph (1)(b);
  - (c) the timing of any advertisement or the giving of any notice.

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*Objections by persons with relevant interest in affected land*

- 3 (1) Any person who has a relevant interest in affected land may make an objection to Natural England about a coastal access report.
- (2) For the purposes of this Schedule an objection is not an admissible objection unless it—
- (a) satisfies the conditions in sub-paragraphs (3) and (4), and
  - (b) is made in accordance with any requirements imposed by regulations under sub-paragraph (7)(b).
- (3) The first condition is that the objection is made on the ground that the proposals in the report, in such respects as are specified in the objection, fail to strike a fair balance as a result of one or more of the following—
- (a) the position of any part of the proposed route;
  - (b) the inclusion of proposals under subsection (2) of section 55B or the nature of any proposal under that subsection;
  - (c) the inclusion of, or failure to include, an alternative route under section 55C(2) or the position of any such alternative route or any part of such a route;
  - (d) the inclusion of, or failure to include, proposals under one or more of paragraphs (a) to (c) of section 55D(2) or the nature of any proposal made under such a paragraph;
  - (e) the inclusion of, or failure to include, a proposal under section 55D(5) or the terms of any such proposal;
  - (f) the exercise of a discretion conferred by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or failure to exercise a discretion conferred by section 301(3) of that Act, in relation to a river.
- (4) The second condition is that the objection specifies the reasons why the person making the objection is of the opinion that a fair balance is not struck as a result of the matter or matters within sub-paragraph (3)(a) to (f).
- (5) An objection under this paragraph may propose modifications of the proposals in the report if the person making the objection considers—
- (a) that those modifications would remedy, or mitigate the effects of, the failure to strike a fair balance to which the objection relates, and
  - (b) that the proposals as so modified would satisfy the requirements of sub-paragraph (6).
- (6) Modified proposals satisfy the requirements of this sub-paragraph if what they propose—
- (a) is practicable,
  - (b) takes account of the matters mentioned in section 297(2), and (where appropriate) section 301(4), of the Marine and Coastal Access Act 2009 (matters to which Natural England and the Secretary of State must have regard when discharging the coastal access duty), and
  - (c) is in accordance with the scheme approved under section 298 of that Act (the scheme in accordance with which Natural England must act when discharging the coastal access duty) or, where that scheme has been revised, the revised scheme.
- (7) The Secretary of State may by regulations make provision about—

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- (a) the steps to be taken by Natural England to make persons with an interest in affected land aware of their entitlement to make objections under this paragraph;
- (b) the form and manner in which, and period within which, objections are to be made.

*Referral of objections to the appointed person*

- 4
- (1) Natural England must send to the Secretary of State a copy of any objection received under paragraph 3 about a coastal access report.
  - (2) The Secretary of State must refer any objection received under sub-paragraph (1) to a person appointed by the Secretary of State for the purposes of this Schedule (“the appointed person”).
  - (3) An appointment under sub-paragraph (2)—
    - (a) must be in writing;
    - (b) may relate to any particular objection specified in the appointment or to objections of a description so specified;
    - (c) may provide for a payment or payments to be made to the appointed person.
  - (4) An appointment under sub-paragraph (2) may, by notice in writing given to the appointed person, be revoked at any time by the Secretary of State in respect of any objection if the appointed person has not, before that time, given the Secretary of State a report containing a recommendation under paragraph 11 in relation to the objection.
  - (5) Where the appointment of the appointed person is revoked in respect of any objection, the Secretary of State must appoint another person under sub-paragraph (2) to deal with the objection afresh under this Schedule.
  - (6) Nothing in sub-paragraph (5) requires any person to be given an opportunity to make fresh representations or comments or to modify or withdraw any representations or comments already made.

*Determination of admissibility of objections*

- 5
- Where an objection is referred under paragraph 4(2), the appointed person must—
- (a) determine whether the objection is an admissible objection, and
  - (b) give notice of that determination, together with the reasons for it, to—
    - (i) the person who made the objection,
    - (ii) the Secretary of State, and
    - (iii) Natural England.

*Admissible objections*

- 6
- (1) Where Natural England is notified under paragraph 5(b) that an objection is an admissible objection, it must send to the Secretary of State its comments on the objection.
  - (2) A notice under paragraph 5(b) that an objection is an admissible objection may require Natural England to include in its comments under sub-paragraph (1)—
    - (a) either—

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- (i) an outline of any relevant alternative modifications of the proposals in the coastal access report, or
    - (ii) if Natural England considers there are no such modifications, a statement to that effect;
  - (b) if an outline is included under paragraph (a)(i), an assessment of the effects of the relevant alternative modifications on the interests of the public in having rights of access over land and the interests of any person with a relevant interest in affected land;
  - (c) either—
    - (i) an outline of any relevant rejected proposals which were considered by Natural England in connection with the preparation of the coastal access report and of its reasons for rejecting them, or
    - (ii) if there are no such proposals, a statement to that effect;
  - (d) information of such other description as the appointed person may specify in the notice under paragraph 5(b), being information which the appointed person considers to be material for the purpose of making a determination under paragraph 10(2).
- (3) In this paragraph, a reference to relevant alternative modifications of the proposals is to modifications of the proposals which Natural England considers—
  - (a) might reasonably be regarded as relevant for the purpose of determining—
    - (i) whether, in the respects identified in the objection, the proposals in the report strike a fair balance, or
    - (ii) whether any modification of those proposals would produce proposals that strike a fair balance or mitigate the effects of any failure to strike a fair balance,
  - (b) are materially different from any modifications included in the objection under paragraph 3(5), and
  - (c) would, if made, result in proposals which satisfy the requirements of paragraph 3(6)(a) and (c).
- (4) In this paragraph, a reference to relevant rejected proposals is to proposals which, if to be given effect to, would require modifications to be made of the proposals in the coastal access report which—
  - (a) are materially different from—
    - (i) any modifications included in the objection under paragraph 3(5), and
    - (ii) any relevant alternative modifications outlined in Natural England's comments on the objection, and
  - (b) would be relevant alternative modifications but for a failure to satisfy the requirement of paragraph 3(6)(a).

#### *Representations about reports*

- 7 (1) Representations about a coastal access report may be made by any person to Natural England.
- (2) The Secretary of State may by regulations make provision about—
  - (a) the steps to be taken by Natural England to make persons aware of their entitlement to make representations under this paragraph;

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- (b) the form and manner in which, and period within which, representations are to be made.
- 8 (1) Natural England must send to the Secretary of State—
- (a) a copy of any representations made by a person within paragraph 2(2)(b) to (f) about a coastal access report,
  - (b) a summary of any other representations made about the report, and
  - (c) Natural England's comments on representations within paragraph (a) or (b).
- (2) In this paragraph references to representations are to representations made under paragraph 7 in accordance with any requirements imposed by regulations under paragraph 7(2)(b).

*Reference of objection to the appointed person*

- 9 (1) This paragraph applies where the Secretary of State is notified under paragraph 5(b) that an objection made about a coastal access report is an admissible objection.
- (2) The Secretary of State must send to the appointed person the relevant documents in relation to the objection.
- (3) The relevant documents are—
- (a) a copy of the coastal access report to which the objection relates,
  - (b) a copy of Natural England's comments on the objection received under paragraph 6,
  - (c) a copy of any representations received under paragraph 8(1)(a) about the coastal access report, so far as those representations appear to the Secretary of State to be relevant to the objection,
  - (d) if there are such representations, a copy of Natural England's comments on them received under paragraph 8(1)(c),
  - (e) if a summary of representations about the coastal access report has been received under paragraph 8(1)(b), a copy of any part of the summary which appears to the Secretary of State to be relevant to the objection, and
  - (f) if there is such a part, a copy of Natural England's comments on the representations to which the part relates received under paragraph 8(1)(c).

*Consideration of objections by appointed person*

- 10 (1) This paragraph applies where the appointed person—
- (a) has determined that an objection about a coastal access report is an admissible objection, and
  - (b) has received, under paragraph 9, the relevant documents in relation to the objection.
- (2) The appointed person must determine whether the proposals set out in the report fail, in the respects specified in the objection, to strike a fair balance as a result of the matter or matters within paragraph 3(3)(a) to (f) specified in the objection.
- (3) If the appointed person is minded to determine that the proposals fail to strike a fair balance, the appointed person must comply with sub-paragraphs (4) and (5) before making such a determination.
- (4) The appointed person must publish a notice containing—

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- (a) details of the objection and Natural England's comments on it under paragraph 6,
  - (b) a statement that the appointed person is minded to determine that the proposals fail to strike a fair balance, and
  - (c) an invitation to submit to the appointed person representations about—
    - (i) the objection (including any modifications of the proposals proposed by the objection),
    - (ii) any relevant alternative modifications contained in Natural England's comments on the objection under paragraph 6, and
    - (iii) any observations which the appointed person has made in the notice regarding any such relevant alternative modifications or any modifications proposed by the objection.
- (5) The appointed person must give a copy of that notice to—
- (a) Natural England;
  - (b) any person with a relevant interest in—
    - (i) affected land to which the objection relates, or
    - (ii) land which is not affected land but would be such land if any of the modifications referred to in sub-paragraph (4)(c)(i) or (ii) were made to the proposals;
  - (c) any person within paragraph 2(2)(b) to (f).
- (6) The Secretary of State may by regulations make provision about—
- (a) the form and manner in which notices are to be published or given under this paragraph,
  - (b) the timing of the publication or giving of notices under this paragraph, and
  - (c) the form and manner in which, and period within which, representations are to be made in response to an invitation in a notice under this paragraph.
- (7) The appointed person may require the Secretary of State, at the Secretary of State's expense—
- (a) to discharge the appointed person's duty to publish or give a notice under this paragraph;
  - (b) to receive on behalf of the appointed person any representations made in response to an invitation in a notice under this paragraph and forward such representations to the appointed person.

*Recommendations of the appointed person*

- 11 (1) Where a determination is made in respect of an objection under paragraph 10(2), the appointed person must give the Secretary of State a report which—
- (a) sets out that determination, and
  - (b) makes one or more recommendations in accordance with this paragraph.
- (2) Sub-paragraph (3) applies if the appointed person concludes under paragraph 10(2) that the proposals do not fail, in the respects specified in the objection, to strike a fair balance as a result of any of the matters within paragraph 3(3)(a) to (f) specified in the objection.
- (3) The appointed person must recommend that the Secretary of State makes a determination to that effect.

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- (4) Sub-paragraphs (5) and (7) apply if the appointed person concludes that the proposals fail, in the respects (or certain of the respects) specified in the objection, to strike a fair balance as a result of one or more of the matters within paragraph 3(3)(a) to (f) specified in the objection.
- (5) The appointed person must determine whether there are any modifications of the proposals which would meet the coastal access requirements.
- (6) For the purposes of this paragraph, modifications meet the coastal access requirements if they—
  - (a) remedy the failure to strike a fair balance identified by the objection, and
  - (b) produce proposals which satisfy the requirements of paragraph 3(6).
- (7) The appointed person must—
  - (a) recommend that the Secretary of State determines that the proposals fail, in one or more of the respects specified in the objection, to strike a fair balance but that there is no modification which would satisfy the coastal access requirements,
  - (b) recommend that, if minded to approve the proposals, the Secretary of State approves the proposals with modifications of a kind described in the recommendation, being modifications which the appointed person considers would meet the coastal access requirements, or
  - (c) recommend that, if minded to approve the proposals, the Secretary of State considers whether modifications of a kind described in the recommendation would meet the coastal access requirements.
- (8) Where a report contains a recommendation under sub-paragraph (7)(a), the appointed person may include in the report—
  - (a) a recommendation that, if minded to approve the proposals, the Secretary of State should approve the proposals with modifications of a kind described in the recommendation, being modifications which the appointed person considers would mitigate the effects of the failure to strike a fair balance, or
  - (b) a recommendation that, if minded to approve the proposals, the Secretary of State should consider whether modifications of a kind described in the recommendation would mitigate the effects of the failure to strike a fair balance.
- (9) Sub-paragraph (10) applies where, in a case to which sub-paragraph (4) applies, the appointed person also determines that the proposals do not fail, in the respects (or certain of the respects) specified in the objection, to strike a fair balance by reason of one or more of the matters within paragraph 3(3)(a) to (f) specified in the objection.
- (10) The appointed person must recommend that the Secretary of State makes a determination to that effect (in addition to any recommendation under sub-paragraph (7) or (8)).
- (11) A report under this paragraph must also set out the appointed person's reasons for any recommendation contained in the report.

#### *Information and documents*

- 12 (1) The appointed person may give Natural England a notice requiring it to provide the appointed person with information or documents—

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- (a) which is or are in the possession of Natural England, and
  - (b) which the appointed person reasonably requires for the purpose of exercising functions under this Schedule.
- (2) Natural England must send the Secretary of State a copy of any information or document provided by it in response to a notice under sub-paragraph (1).
- (3) The appointed person may give the Secretary of State a notice requiring the Secretary of State to provide the appointed person with—
- (a) a copy of any coastal access report specified in the notice which the appointed person reasonably requires for the purpose of exercising functions under this Schedule;
  - (b) any information in the possession of the Secretary of State which the appointed person reasonably so requires.

*Holding of local inquiries and other hearings by appointed person*

- 13 (1) Where the appointed person considers it necessary or expedient to do so, the appointed person may hold a local inquiry or other hearing in connection with the consideration of an objection under this Schedule.
- (2) Subject to sub-paragraph (3), the costs of a local inquiry or other hearing held under this paragraph are to be defrayed by the Secretary of State.
- (3) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) apply to local inquiries or other hearings held under this Schedule by the appointed person as they apply to inquiries caused to be held under that section by a Minister, but as if—
- (a) in subsection (2) (evidence) the reference to the person appointed to hold the inquiry were a reference to the appointed person,
  - (b) in subsection (4) (recovery of costs of holding the inquiry)—
    - (i) references to the Minister causing the inquiry to be held were references to the appointed person, and
    - (ii) references to a local authority were references to Natural England, and
  - (c) in subsection (5) (orders as to the costs of the parties) the reference to the Minister causing the inquiry to be held were a reference to the appointed person.

*Supplementary provision about procedure in connection with objections*

- 14 (1) Subject to the provisions of this Schedule, the Secretary of State may, by regulations, make provision about the consideration of objections by the appointed person.
- (2) Such regulations may, in particular, include—
- (a) provision enabling two or more objections, in the circumstances specified in the regulations, to be considered by the appointed person together;
  - (b) provision enabling the appointed person to conduct an inspection of any land;
  - (c) provision about the procedure for the conduct of local inquiries and other hearings.



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*Preliminary consultation*

- 15 (1) The Secretary of State may, by regulations, make provision about the procedure to be followed where, before determining whether or not to approve the proposals in a coastal access report (with or without modifications), the Secretary of State wishes—
- (a) to identify or investigate possible modifications of the proposals to which it might be appropriate to give further consideration, and
  - (b) to consult persons for the purposes of identifying or investigating such modifications.
- (2) Regulations under this paragraph may, in particular, apply any provision of this Schedule (with or without modifications).

*Determinations under section 52*

- 16 (1) Before making a determination under section 52 in respect of a coastal access report, the Secretary of State must consider—
- (a) any objection about the report which the appointed person has determined is an admissible objection,
  - (b) Natural England's comments under paragraph 6 on any such objections,
  - (c) any report under paragraph 11 in respect of any such objection,
  - (d) any representations made about the coastal access report, or summary of such representations, and any comments on those representations, received under paragraph 8, and
  - (e) any information or document a copy of which is sent to the Secretary of State under paragraph 12(2).
- (2) The power under section 52 to approve proposals contained in a report submitted under section 51 pursuant to the coastal access duty includes a power to approve those proposals (with or without modifications) so far as they relate to one or more parts of the route only, and reject the remaining proposals.
- (3) Where a report required to be considered under sub-paragraph (1)(c) contains a statement of a finding of fact, the Secretary of State in making the determination is bound by that finding unless the Secretary of State is satisfied—
- (a) that the finding involves an assessment of the significance of a matter to any person with a relevant interest in land or to the public,
  - (b) that there was insufficient evidence to make the finding,
  - (c) that the finding was made by reference to irrelevant factors or without regard to relevant factors, or
  - (d) that the finding was otherwise perverse or irrational.
- (4) The Secretary of State may, by regulations, make provision about the procedure to be followed where the Secretary of State is minded to approve proposals with modifications other than modifications made in accordance with a recommendation under paragraph 11(7)(b) or (c) or (8)(a) or (b).
- (5) For the purposes of sub-paragraph (4) a modification is to be regarded as made in accordance with a recommendation under paragraph 11(7)(b) or (c) or (8)(a) or (b) if it is not materially different from a modification which could be so made.
- (6) Regulations under sub-paragraph (4) may, in particular, apply any provision of this Schedule (with or without modifications).

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- (7) Any requirement imposed by virtue of sub-paragraph (4) is in addition to the duty to consult imposed by section 52(1).

*Notice of determinations under section 52*

- 17 (1) Where the Secretary of State makes a determination under section 52 in respect of a coastal access report, the Secretary of State must, as soon as reasonably practicable, comply with this paragraph.
- (2) The Secretary of State must—
- (a) take reasonable steps to give notice of the determination to persons with a relevant interest in affected land, or
  - (b) if the Secretary of State considers it appropriate, publish a notice of the determination in such manner as the Secretary of State considers likely to bring it to the attention of those persons.
- (3) The Secretary of State (in addition to complying with section 52(2)) must give notice of the determination to—
- (a) any body of a kind mentioned in section 52(2) in whose Park or area affected land is situated (but which is not required to be notified under section 52(2)),
  - (b) any London borough council for an area in which affected land is situated,
  - (c) any local access forum for an area in which affected land is situated,
  - (d) the Historic Buildings and Monuments Commission for England, and
  - (e) the Environment Agency.
- (4) Where the Secretary of State was required under paragraph 16(1)(a) to consider an objection when making the determination, a statement of the reasons for the determination (so far as relevant to the objection) must be included in—
- (a) any notice given or published under sub-paragraph (2),
  - (b) any notification of the determination under section 52(2), and
  - (c) any notice given under sub-paragraph (3).
- (5) Where the Secretary of State was required under paragraph 16(1)(c) to consider a report and the Secretary of State in making the determination does not follow a recommendation in the report, the statement of reasons required by sub-paragraph (4) must also include the reasons for not following the recommendation.

*Interpretation*

- 18 In this Schedule—
- “admissible objection” is to be construed in accordance with paragraph 3(2);
  - “the appointed person” has the meaning given by paragraph 4(2);
  - “coastal access report” has the meaning given by paragraph 1(a);
  - “fair balance” is to be construed in accordance with paragraph 1(b);
  - “relevant alternative modifications” has the meaning given by paragraph 6(3);
  - “the relevant documents”, in relation to an objection, has the meaning given by paragraph 9(3).]

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